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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 304 of the )  
Telecommunications Act of 1996 ) CS Docket No. 97-80  
 )  
Commercial Availability of )  
Navigation Devices )

To: The Commission

REPLY COMMENTS  
OF  
TANDY CORPORATION

Tandy Corporation, by its undersigned attorneys, hereby files its reply to comments on the Commission's Notice of Proposed Rulemaking (NPRM) in the captioned proceeding.<sup>1</sup>

INTRODUCTION

As one of America's leading retailers of high quality consumer electronics and telecommunications equipment for consumers and business, Tandy has a vital interest in this proceeding the purpose of which is to promote the commercial availability of equipment for use with multichannel video programming systems. Tandy envisions that rules developed in this proceeding will enable American consumers to acquire cable modems, set-top boxes and other navigation devices at one of the

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1. NPRM released February 20, 1997, FCC 97-53. Tandy is a member of the Consumers Electronics Retailers Coalition (CERC) and concurs with CERC's comments and reply comments in this proceeding.

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more than 6,900 Tandy RadioShack or Computer City affiliated stores.

Tandy urges the Commission to promulgate rules pursuant to new Section 629 of the Communications Act, 47 U.S.C. § 549,<sup>2</sup> that establish the right of consumers to independently obtain and use their own equipment to receive any service offered over a multichannel video programming system.

#### DISCUSSION

**I. THE COMMISSION SHOULD ADOPT A RULE TO REQUIRE THAT EQUIPMENT AUTHORIZED AFTER JULY 1, 1998 BE PORTABLE ACROSS SIMILAR MVPD SYSTEMS.**

In the NPRM at ¶ 24, the Commission noted that "[i]f a retail market for navigation equipment is to develop, it may be necessary for there to be some degree of standardization so that devices involved are . . . geographically portable and will work with similar types of MVPDs in different parts of the country . . . ." In its comments, Tandy encouraged the Commission to foster the commercial availability of navigation equipment and other devices from retailers by providing that equipment used with similar MVPD systems (i.e., broad categories of MVPD systems such as digital cable television providers, direct satellite service providers, etc.) be portable across these systems.

The record in this proceeding demonstrates that portability across similar MVPD systems is vital. For example, Circuit City

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2. Section 629 was added to the Act pursuant to Section 304 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

notes that absent "national portability, there will be little incentive for manufacturers to make, retailers to stock, or consumers to buy, devices designed to offer access to MVPD systems." Circuit City at 4. NCTA notes "that portability of CPE is good for the consumer, [and] good for cable operators because it will help make [their] products easier to use, transportable when cable customers move and national in scope." NCTA at 36. Time Warner recognizes that "[e]quipment portability and compatibility of navigation devices may well play an important role in the development of wide spread retail availability of digital navigation equipment." Time Warner at 35. See also Zenith at 12 ("Consider the sales viability of a retail set-top box that would not be portable if the consumer moved across the street into a different cable franchise.").

In order to promote the commercial availability of equipment for use with MVPD systems, Tandy has proposed the following equipment authorization rule:

On or after July 1, 1998, no application for the authorization of multichannel video equipment will be granted unless the applicant demonstrates that:

- (a) the multichannel video equipment will be readily available to consumers for purchase or lease from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor in those markets where the equipment will be utilized, and

(b) the multichannel video equipment will be portable to all other similar networks of multichannel video service providers in every geographic location where such service is offered.

For purposes of this rule, "affiliation" shall be defined in accordance with Section 3(1) of the Communications Act and "multichannel video equipment" shall include equipment located at the premises of a customer used to access cable television service, direct broadcast satellite service, satellite master antenna television service, multichannel multipoint distribution service, instructional television fixed service, local multipoint distribution service, open video system service, and all other services offered over such systems (including but not limited to services accessed through cable modems).

Significantly, this proposed equipment authorization rule would not require the Commission to adopt specific standards to promote portability. Commenters conceptually agree with this approach. See Ameritech New Media, Inc. at 10 (urging the Commission to convene an industry advisory group to work with existing standards setting bodies to promote portability); Scientific-Atlanta, Inc. at 21 ("The Commission should not attempt to set standards, but rather rely on the private standards setting process."). The rule would motivate equipment manufacturers and MVPD system operators to coordinate their activities so that navigation devices and other equipment are

compatible across similar MVPD systems. See Time Warner at 35 ("The Commission's energy in this proceeding is best channeled towards facilitating the inter-industry development of . . . digital device specifications.").

The private sector already has made considerable progress in standardizing digital transmission standards. Indeed, General Instrument, as well as other commenters, note that "cable operators and key equipment manufacturers are developing digital transmission and cable modem standards that will permit portability, and are doing so without governmental intervention." General Instrument at 37. Thus, equipment manufacturers and MVPD system operators are already well on their way to ensuring that navigation devices and other equipment are compatible across similar MVPD systems.

It is important to note that the portability rule would not hinder the development of equipment unique to a specific MVPD system where the manufacturer demonstrates that waiver of the rule "is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products." 47 U.S.C. § 549(c).

The Commission should establish the portability rule effective on July 1, 1998. Equipment authorized on or after that date thus would function across similar MVPD systems. With advance notice of the effective date, manufacturers and MVPDs

will have ample time to coordinate their efforts to develop equipment compatible across similar MVPD systems.

## **II. THE COMMISSION SHOULD ADDRESS THE CABLE MODEM MARKET NOW.**

Tandy agrees with General Instrument that "the cable modem is an ideal device on which to focus in the initial implementation phase" of this proceeding. General Instrument at 63. However, the Commission's efforts to expeditiously address the cable modem market should not delay implementation of the rule proposed by Tandy above as well as other rules the Commission deems necessary to promote the commercial availability of navigation equipment. As Circuit City explains, "[t]o the extent that the solution for cable modems is expedited due to progress already made in private sector standards setting, . . . this should be reflected in very ambitious compliance date applicable to" cable modems. Circuit City at 19.

Because there are no security concerns inherent in cable modem equipment that have to be addressed,<sup>3</sup> the Commission can act immediately to promote the commercial availability of cable modems for the benefit of American consumers. In its comments at 7-8, Tandy demonstrated that the nascent (albeit burgeoning) cable modem market presents a unique opportunity for the Commission to establish Section 629 regulations.

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3. General Instrument correctly points out that the design of cable networks presents certain security concerns. General Instrument at 63 n.116.

The Commission should reject Time Warner's unfounded argument that cable modems and similar devices are beyond the sphere of Section 629. See Time Warner at 20 n.23 ("Cable modems and similar devices which are used to access cable services other than video programming services delivered over a cable system should be found beyond the scope of Section 629, particularly in light of Congress' direction that the 'Commission avoid actions which could have the effect of freezing or chilling the development of new technologies and services.'"). U.S. West also misconstrues Section 629 asserting that it should be limited to devices used to receive video services only. U.S. West at 10. Section 629 plainly directs the Commission to

adopt regulations to assure the commercial availability, to consumers . . . of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.

47 U.S.C. § 549(a) (emphasis added). Thus if equipment is used to access any service over a multichannel video programming system, it is within the ambit of Section 629. Time Warner's and U.S. West's arguments to the contrary are unavailing. If Congress had intended for Section 629 to be limited as these commenters suggest, then the Conference Committee surely would not have stated that Section 629 is intended to "ensure that consumers are not forced to purchase or lease a specific, proprietary converter box, interactive device or other equipment

from the cable system or network operator." H.R. Conf. Rep. No. 104-458, at 181 (1996) (emphasis added).

Motorola surmises that [r]egulation of cable modems . . . would decrease the availability of such devices in light of ongoing efforts to develop consensus-based industry standards." Motorola at 14. Zenith believes that "modems . . . do not require any Commission action to assure competitive availability." Zenith at 10. Tandy suggests three principles to regulate the cable modem/service market; these principles will promote a competitive cable modem market and will not hinder industry standards setting:

First -- No Exclusive Distribution. The Commission must make clear that Section 629(a) forbids an MVPD from being the exclusive purveyor of modems compatible with its system.

Second -- Separate Price Information. If an MVPD markets modems, the MVPD's charges for these devices must be "separately stated," 47 U.S.C. § 549(a), from the charges for internet access service. With the price of equipment and service separately stated, consumers can make an informed decision regarding where to obtain their modems and/or internet access service.

Third-- No Subsidization. MVPDs must not use the charge for internet access service to subsidize the charge for modems. The Commission should specify that MVPDs cannot vary the charge for internet access service based on whether consumers acquire their modems from the MVPD or from an independent retailer. Thus, any promotional offering of internet access service must be made



available on the same terms to all prospective subscribers irrespective of where they obtain their modems.

With these simple precepts, the Commission can foster the commercial availability of modems for use with MVPD systems.

### III. THE COMMISSION SHOULD CLARIFY CONSUMERS' RIGHT TO ATTACH.

Tandy and a range of commenters agree with the Commission that it should "incorporate the basic Carterfone [13 F.C.C.2d 420 (1968)] principle into the [Section 629] rules -- devices that do not adversely affect the network and are privately beneficial without being publicly detrimental, may be attached to the network." NPRM at ¶ 56. As Bell Atlantic and NYNEX put it, "consumers must have the right to use navigation devices of their choosing . . . ." Bell Atlantic and NYNEX at 1. See also Business Software Alliance at 3-4, Consumer Electronics Manufacturers Association at 6 ("the most fundamental principle underlying Section 629 is the consumer's right to connect to the multichannel video programming system any non-network device, so long as the device does not harm the network.").

The Commission should be circumspect of calls to limit the consumer's right to attach "by the right of the network provider to establish and enforce what can be attached to its network." General Instrument at 72-73. Rather, as Motorola suggests, the contours of what can be attached to an MVPD network should only be limited by FCC defined criteria to prevent harm to the network and reasonable signal leakage rules. See Motorola at 11-13. Tandy agrees that the Commission should "adopt a rule requiring

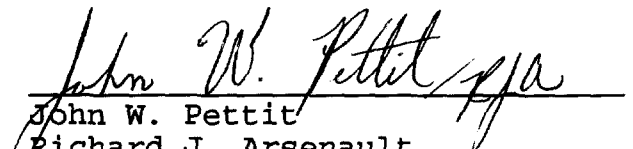
an MVPD to allow subscribers to connect any compatible equipment, regardless of where it is leased or purchased."

Telecommunications Industry Association at 12 (emphasis in original).

**CONCLUSION**

For the reasons stated above and in its comments filed May 16, 1997 herein, Tandy urges the Commission to act quickly to implement its Section 629 mandate to promote the commercial availability of navigation equipment.

Respectfully submitted,

  
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June 23, 1997

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CERTIFICATE OF SERVICE

I, Richard J. Arsenault, hereby certify that on this 23rd day of June 1997, I caused a copy of the attached Reply Comments of Tandy Corporation to be served by hand delivery to the following:

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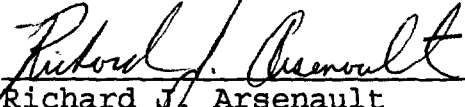
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